

**California Public Employees' Retirement System
Proposed Amendment to Title 2, California Code of Regulations
Amendment to Section 599.500 and
Proposed New Section 599.511**

FINDING OF EMERGENCY

The Board of Administration (Board) of the California Public Employees' Retirement System (CalPERS) finds that an emergency exists and that the amendment of section 599.500 to Title 2, California Code of Regulations, and that the addition of section 599.511 to Title 2, California Code of Regulations is necessary for the immediate preservation of the public health and general welfare. The amended and new sections will be contained in Title 2, Division 1, Chapter 2, Subchapter 3 of the California Code of Regulations, which implements and interprets the Public Employees' Medical and Hospital Care Act (PEMHCA), Government Code section 22751, et seq.

Pursuant to its authority under PEMHCA, through contracts with carriers and two self-funded plans, the Board provides healthcare coverage for nearly 1.4 million employees and annuitants (and their family members) of the state and school and contracting agency employers that have elected to participate in PEMHCA.

The Board finds that the situation the attached proposed language is intended to address meets the requirement for emergency based on the following:

- 1) Public agencies contracting with CalPERS for health care services may immediately terminate their agreements with CalPERS and contract with commercial plans providing alternative health benefit plans not presently offered by CalPERS. The withdrawal of public agencies from CalPERS' health benefit plans would destabilize CalPERS' risk pool and lead to increases in premium rates for remaining employees, annuitants and their families.
- 2) Legislation effective January 1, 2004 (SB 436) amended Government Code section 22790 and authorized CalPERS to now offer alternative health benefit plans to employees and annuitants of contracting agencies different from those plans currently offered by CalPERS to state employees, annuitants and their family members. The immediate ability of CalPERS to provide alternative benefit health plans to contracting agencies will enhance CalPERS' ability to provide its contracting agencies with more competitive health benefit plans and reduce the likelihood of their withdrawal from the CalPERS' risk pool and its offered health plans.
- 3) Failure to adopt these regulations on an emergency basis will preclude the Board from approving alternative health benefit plans for 2005. Health plan proposals and rates must be presented to the Board no later than June 2004 to be included as a health benefit plan for the 2005 calendar year. Unless the Board is able to approve alternative benefit health plans in June 2004 for the 2005 calendar year, contracting agencies may leave CalPERS' health benefit plans for more favorable plans in the commercial market in their local areas.

- 4) The ability to provide alternative benefit plans is necessary in order to immediately maintain and otherwise improve CalPERS' health programs in terms of risk pool stability and the creation of more established long-term health partners.

Background

Agencies contracting with CalPERS for health care coverage indicate that flexibility in health plans is necessary for their continued participation in the CalPERS health program. The current standard benefit structure offered to employees and annuitants of the state and contracting agencies does not meet the needs of all contracting agencies. To remain competitive with commercial plans offering alternative benefit plans, the Board sponsored Senate Bill (SB) 426 (Soto), which, among other things, amended Government Code section 22790(e)(2) effective January 1, 2004, to authorize the Board to offer health benefit plans exclusively for employees and annuitants of contracting agencies in addition to or in lieu of other health benefits plans.

Based on the enactment of SB 426 and in furtherance of its fiduciary duty to all CalPERS health program members, the Board approved the attached regulations on an emergency basis to implement the provisions of SB 426. This action is necessary at this time because the Board has determined that the ability to provide alternative health benefit plans to contracting agencies is necessary to retain contracting agencies and ensure overall risk pool and health premium rate stability. The Board has also determined that the withdrawal of contracting agencies from the CalPERS health program will result in an immediate adverse impact to all CalPERS health plan enrollees and their employers.

AUTHORITY AND REFERENCE

Government Code section 22773 grants the Board "all powers reasonably necessary to carry out the powers and responsibilities expressly granted or imposed upon it" pursuant to the Public Employees' Medical and Health Care Act (PEMHCA). In addition, Government Code section 22775 empowers the CalPERS Board to adopt all necessary rules and regulations to carry out the provisions of PEMHCA "including but not limited to establishing the scope and content of a basic health benefits plan, regulations fixing reasonable minimum standards for health benefits plans, regulations fixing the time, manner, method and procedures for determining whether approval of any plan should be withdrawn, and regulations pertaining to any other matters it may be expressly authorized or required to provide for by rule or regulation by the provisions of this part." When adopting such rules and regulations, section 22775 directs the Board to "be guided by the needs and welfare of individual employees, particular classes of employees, and of the State, as well as prevailing practices in the field of prepaid medical and hospital care."

Government Code section 22790(e)(2) authorizes the Board to contract for, or approve, health benefit plans exclusively for the employees and annuitants of contracting agencies, including offering health benefit plans in addition to or in lieu of other health benefit plans offered. The governing body of a contracting agency may elect, upon the

filing a resolution with the board, to provide those health benefit plans to its employees and annuitants.

The attached amendment to section 599.500 and proposed section 599.511 implement, interpret and make specific Government Code Section 22790(e)(2).

INFORMATIVE DIGEST

This proposed action would implement, interpret and make specific Government Code section 22790(e)(2). This proposed action would provide criteria for approving alternative benefit plans in the event the Board elects to offer such plans, specifies that State employees and annuitants are not eligible to enroll in such plans, and establishes criteria for the effective dates of resolutions that are submitted by contracting agencies to elect such plans.

The proposed action would amend existing section 599.500 to define the term “alternative benefit plan.” The proposed action would also adopt proposed section 599.511 authorizing the Board to approve alternative benefit plans for contracting agencies should it choose to do so.

OTHER STATUTORY REQUIREMENTS

There are no additional rulemaking requirements specific to CalPERS, this specific regulatory action or this type of regulation.

LOCAL MANDATE DETERMINATION

The proposed regulatory action imposes no mandate on local agencies.

FISCAL IMPACT

The proposed regulatory action has no cost impact to any local agency or any school district that must be reimbursed under Government section 17500.

The proposed regulatory action imposes no non-discretionary cost on local agencies.

The proposed regulatory actions have no cost impact to any state agency.

The proposed regulatory action has no cost impact to any federal funding to the state

PROPOSED REGULATORY ACTION BY CALPERS

AMEND SECTION 599.500 AND ADOPTION OF SECTION 599.511 TO TITLE 2 OF THE CALIFORNIA CODE OF REGULATIONS

Amend Section 599.500 ("Definitions") by adding a new subsection (t) as follows:

- (t) "Alternative benefit plan" means a health benefits plan approved, or contracted for, by the Board exclusively for employees or annuitants of contracting agencies pursuant to Section 22790(e)(2) of the Government Code.

NOTE: Authority cited: Sections 22773, 22775, 22775.5, 22777 and 22810, Government Code.
Reference: Sections 22751-22866, Government Code.

Add new Section 599.511 as follows:

Section 599.511 Alternative Benefit Plans

- (a) To be qualified to be approved, or contracted for, by the Board, an alternative benefit plan must comply with the Public Employees' Medical and Hospital Care Act and this subchapter.
- (b) Notwithstanding any other provision of this subchapter, only employees and annuitants of contracting agencies and their family members shall be eligible to enroll in an alternative benefit plan.
- (c) Notwithstanding any other provision of this subchapter, the Board may elect to offer one or more alternative benefit plans to contracting agency employers either in lieu of, or in addition to, any other health benefits plans approved or contracted for by the Board.
- (d) In the event that the governing board of a contracting agency that is subject to the Public Employees' Medical and Hospital Care Act elects to provide an alternative benefit plan(s) to its employees or annuitants, it must file a resolution with the Office of Employer and Member Health Services of the Board. The resolution shall be effective on the first day of the second month following the month in which the resolution is received in the office of the Board.

NOTE: Authority cited: Sections 22773, 22775, Government Code.
Reference: Sections 22790(e)(2), 22794(b)(3), Government Code.